



Amy L. Alvarez
District Manager
Federal Government Affairs

Suite 1000
1120 20th Street, NW
Washington DC 20036
202-457-2315
FAX 202-263-2601
email: alalvarez@att.com

September 24, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Application by Verizon New England and Verizon Delaware for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, Docket 02-157

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Docket 01-338

Implementation of the Local Competition Provisions of the Telecommunications Act of the 1996, Docket 96-98

Deployment of Wireline Services Offering Advanced Telecommunications Capability, Docket 98-147

Dear Ms. Dortch:

On Monday, September 23, 2002, Robert Quinn and the undersigned, both of AT&T, met with Matthew Brill and John Branscome of Commissioner Abernathy's office to discuss the pricing issues raised by AT&T in connection with Verizon's joint application for interLATA authority in Delaware and New Hampshire. During the discussion, AT&T was asked whether the switching rate reductions filed by Verizon in Delaware have taken effect of their own force despite the absence of any affirmative action by the Delaware PSC approving those rates changes. The answer is no.

As noted in AT&T's September 10 supplemental comments, Delaware law does not allow a proposed rate change to take effect without advance notice and publication and, upon the request of an interested party, a hearing on the record.¹ See AT&T Supplemental Comments (Sept. 10, 2002) at 2-3

¹ At a minimum, Delaware law requires at least 60 days notice before new rates can become effective without specific commission authorization ("Unless the Commission otherwise orders, no public utility shall make any change in any existing rate except after 60 days notice . . ." 26 Del. Code § 304). While it is not clear that this provision applies to UNE rate changes in the face of a federal mandate requiring specific commission approval of those rates, it is the only argument that Verizon has by which it can assert that its new switching rates may become effective without commission authorization. Consequently, even under the most liberal reading of Verizon's argument, its new Delaware switching rates could not be considered effective until October 29, 2002 at the earliest (60 days after filing of the

(discussing Delaware law). None of these requirements have been met. The PSC has not approved the rate reductions, let alone found that they are just and reasonable. Nor is there any record that would allow the PSC to make such findings.²

Moreover, the 1996 Act (which, as federal law, preempts any inconsistent state law) provides that, when the proposed rate change involves the price of a UNE set forth in a statement of generally available terms and conditions ("SGAT"), the PSC may not approve the change without finding that the changed price terms are just and reasonable under the 1996 Act and the Commission's standards—i.e., are TELRIC-compliant. *See* 47 U.S.C. § 252(f)(2) (incorporating § 252(d) and Commission pricing rules). The same is true of proposed changes in price terms set through arbitrations: The Delaware PSC has no authority to implement them without affirmatively finding that they are just and reasonable under the 1996 Act. *See* 47 U.S.C. §§ 252(c)(2), (d)(1) and (e)(2)(B).

The Commission has no authority to fill the legal gap created by the PSC's inaction by approving the rate change on the Commission's own initiative. The division of power prescribed the 1996 Act is clear in this regard: Section 252 gives state commissions the sole jurisdiction to adjudicate UNE prices and approve rate changes (unless they waive their authority pursuant to Section 252(e)(5)). Review of state commission decisions takes place in federal district courts, not the Commission. *Id.*, § 252(e)(6). The only remedy available to the Commission upon finding that a state commission has approved unlawfully high rates under section 252 is to deny the section 271 application of the RBOC that charges those rates.

In addition to Delaware switching rates and price squeeze, we also discussed AT&T's concerns regarding Verizon's non-recurring charges ("NRCs") in Delaware, and in particular, Verizon's inflated NRCs for vertical feature changes and hot cuts. As part of this discussion, we also referred to AT&T's comments filed in the above-referenced Triennial Review dockets which highlight the need to establish some form of electronic loop provisioning in order to accelerate the development of facilities-based local competition. We explained that the technology to support electronic provisioning is technically feasible and available today and that electronic provisioning could eliminate some of the enormous financial and technical obstacles to facilities-based competition that currently exist.

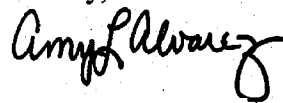
Finally, AT&T explained that for purposes of rate benchmarking, conducting a comparison between the switching rates in New Hampshire and New York is appropriate as the Synthesis Model overstates the costs of transport, particularly in lower density states. We reiterated that the relief AT&T seeks is narrow and specific: that the Commission consider AT&T's supplemental benchmark comparison of a single subset of non-loop rates.

new rates in Delaware). The delay in effective date being solely the fault of Verizon's not lowering its switching rate until Day 64 of its 90 day Section 271 proceeding, any potential long distance authority could not become effective until after that date. *Kansas/Okla. 271 Order* at ¶ 289 (delaying effective date of the Order).

² It should be emphasized that the prior UNE rate prescriptions of the Delaware PSC were specific rates, not rate ceilings or maxima. Hence, there is no possible argument here that the reduced rates fall within the continuing authorization of the PSC's rate order from the previous UNE rate case. *See* Sept. 10 PSC Hearing Tr. 2459 (PSC Commissioner Puglisi) ("The rates we approved are specific rates. They are not maximum rates.").

One electronic copy of this Notice is being submitted in each of the above-referenced proceedings in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy F. Alvarez".

cc: John Branscome
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Gary Remondino
Julie Saulnier
Victoria Schlesinger
Henry Thaggert
Tracey Wilson